

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 2, 2019 appellant, then a 37-year-old intelligence analyst, filed a traumatic injury claim (Form CA-1) alleging that on November 27, 2019 he injured his left shoulder and hip slipped when walking on ice in the parking lot and slipped while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

OWCP received emergency room discharge instructions dated November 27, 2019 from Dr. Brent Levy, a Board-certified emergency medicine specialist. Dr. Levy diagnosed a shoulder strain.

Appellant submitted an x-ray of appellant's left shoulder dated November 27, 2019 from Dr. Jennifer Kemp, a diagnostic radiologist. Dr. Kemp related an impression of a normal left shoulder.

In a magnetic resonance imaging (MRI) scan report dated August 22, 2020, Dr. Vincent B. Herlihy, a diagnostic radiologist, related that appellant had experienced left shoulder pain following a fall. He diagnosed mild posterior humeral head subluxation with grade 2 chondromalacia of the posterior glenoid, nondisplaced linear tear of the inferior glenoid labrum with mild underlying fraying; mild supraspinatus, infraspinatus, and subscapularis tendinosis without a rotator cuff tear; and mild subacromial subdeltoid bursitis.

Appellant submitted a medical report dated September 24, 2020 from Dr. John Papilion, a Board-certified orthopedic surgeon. Dr. Papilion related that appellant fell on his shoulder at home in November. He stated that appellant's MRI scan revealed tendinosis in the supraspinatus muscle without rotator cuff tear. Dr. Papilion provided an assessment of left shoulder impingement syndrome.

On November 17, 2020 appellant filed a notice of recurrence (Form CA-2a), indicating that on January 8, 2020 he experienced discomfort, weakness, and a lack of mobility. He noted that he was originally injured on November 27, 2019 and, following the initial injury, he had undergone physical therapy treatments.

In a February 11, 2021 development letter, OWCP informed appellant of the deficiencies in his claim and advised him of the type of factual and medical evidence necessary to establish his claim. It provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In response, appellant submitted progress notes dated November 27 and December 3, 2019 from Terri Link, a registered nurse, who related that appellant slipped in the parking lot while coming to work and landed on his left shoulder. She also related that appellant was treated in an emergency room on November 27, 2019.

In a report dated March 9, 2021, Dr. Papilion related that appellant sustained an injury to his left shoulder at work on October 27, 2019 when he slipped on ice and fell onto an outstretched arm. He diagnosed left shoulder tendinosis in the supraspinatus muscle. Dr. Papilion opined that appellant's symptoms were directly related to his slip and fall injury at work.

Appellant responded to OWCP's development questionnaire on March 10, 2021. He alleged that he was walking from his vehicle across the parking lot to the entrance of the building where he worked when he slipped on ice. Appellant stated that he continued to feel pain and discomfort and received an x-ray to confirm that there were no broken bones. He stated that he had no similar disabilities or symptoms prior to his injury.

By decision dated April 1, 2021, OWCP accepted that the November 27, 2019 employment incident occurred, as alleged, but denied appellant's claim as causal relationship had not been established between the diagnosed medical conditions and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or condition causally related to the accepted employment incident.

Appellant subsequently resubmitted Dr. Papilion's September 24, 2020 and March 9, 2021 reports.

On July 8, 2021 appellant requested reconsideration and submitted additional evidence.

In a report dated May 19, 2021, Dr. Papilion stated that appellant injured his left shoulder at work on October 27, 2019 when he fell on ice onto an outstretched arm. He diagnosed tendinitis in the supraspinatus muscle and stated it was his medical opinion that appellant's symptoms were related to his slip and fall injury at work.

By decision dated August 5, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.²

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.³

² 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

³ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁴ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law; nor has appellant advanced a relevant legal argument not previously considered by OWCP. Therefore, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).⁷

In support of appellant's request for reconsideration, appellant resubmitted copies of Dr. Papilion's September 24, 2020 and March 9, 2021 reports. He also provided a report dated May 19, 2021 from Dr. Papilion. While Dr. Papilion's May 29, 2021 letter was new, it is substantially similar to his March 9, 2021 report that was previously of record. Providing additional evidence that duplicates or is substantially similar to evidence already of record does not constitute a basis for reopening a case.⁸ As appellant did not provide relevant and pertinent new evidence, he was also not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).⁹

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁰

⁴ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁵ *Id.* at § 10.608(a); *see also* *A.F.*, Docket No. 19-1832 (issued July 21, 2020); *M.S.*, 59 ECAB 231 (2007).

⁶ *Id.* at § 10.608(b); *J.B.*, Docket No. 20-0145 (issued September 8, 2020); *Y.K.*, Docket No. 18-1167 (issued April 2, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *Supra* note 3 at § 10.606(b)(3)(i) and (i); *P.S.*, Docket No. 20-1090 (issued September 9, 2021); *A.G.*, Docket No. 20-0290 (issued June 24, 2020); *C.B.*, Docket No. 18-1108 (issued January 22, 2019).

⁸ *P.S., id.*; *see G.J.*, Docket No. 20-0071 (issued July 1, 2020); *V.Q.*, Docket No. 19-1309 (issued January 3, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁹ *Supra* note 3 at § 10.606(b)(3)(iii); *T.W.*, Docket No. 18-0821 (issued January 13, 2020).

¹⁰ *D.G.*, Docket No. 19-1348 (issued December 2, 2019).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board